In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1089

RALSTON STEEL CORPORATION, ASSIGNEE OF MORGAN MANUFACTURING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In early August 1951, the Banner Bed Company and its stockholders, the Liebermans, submitted to the Collector of Internal Revenue their offer to compromise their tax liabilities for $50,000. The sum was made available to the taxpayers by petitioner corporation through a subsidiary (Morgan Manufacturing Corporation). Petitioner was not related to the taxpayers whose liabilities were in question.

Because Morris Rubin, who owned and controlled petitioner, did not wish the $50,000 to be used for any purpose other than discharging the taxpayers' liabilities, he arranged that the sum be furnished to escrow agents who were either to use it to com-

promise the taxpayers' liabilities or to return it to the lender. In accordance with this agreement the escrow agents sent the Collector a certified check for $50,000 along with a letter referring to the taxpayers' offer of compromise and indicating that the check was submitted subject to the following terms and conditions (Pet. App. 25, 26): "(a) In the event the offer is accepted, the said sum of $50,000.00 shall be retained by you in full satisfaction and settlement of the liabilities specified in [the taxpayers'] offer"; "(b) In the event that the offer is rejected * * * the $50,000.00 shall be returned promptly to the undersigned."[1]

Prior to the time that the Internal Revenue Service had accepted the taxpayers' offer but at a time when the offer was still outstanding, petitioner, through the escrow agents, sought to withdraw the deposit of $50,000. When the Service refused, petitioner brought this action in the Court of Claims. The court below held that the Internal Revenue Code and regulations provide for the return of a sum offered in compromise only on the withdrawal of the offer by the offeror (here the taxpayers) and that, under the terms of petitioner's submission of the $50,000, it could demand the return of the sum only if the offer were rejected. Accordingly, the court denied recovery.

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[1] Initially the escrow agents and the taxpayers had indicated that the $50,000 was to be returned to the agents if the taxpayers' offer was not accepted by March 15, 1952. This condition was eliminated by a letter from the agents to the Collector on July 22, 1953. Pet. App. 36–37.

The Court of Claims found it unnecessary to determine in the present case whether the taxpayers or the petitioner was equitably entitled to control the use made of the tendered $50,000 (Pet. App. 12). This issue, it held, could be resolved in a suit between these parties (Pet. App. 17). Extraordinary difficulties would arise if the Internal Revenue Service were required "to delve into the underlying arrangements or to evaluate the true ownership of the funds transmitted with the compromise offer" (Pet. App. 15). "To determine the true owner, the Government would often have to examine the documents back of a compromise payment, and to take other steps necessary to ferret out the interested persons, the nature of the relationship, and the purpose of the transaction by which the offeror received the funds" (Pet. App. 13). To avoid these difficulties, the applicable statutes and regulations make absolutely clear that only an offeror is entitled to demand the return of a deposit and, then, in connection with the withdrawal of the offer. See 26 U.S.C. 7122, 7809 and 26 C.F.R. 301.7122-1 (d)(4), Pet. 3-5. A party who has not made the offer in compromise but has merely furnished the funds for the offeror is given no such statutory right.

Moreover, the court found that the only contractual right petitioner retained in connection with the tender of funds was that "in the event the offer is rejected"—an occurrence which did not take place—"the $50,000.00 shall be promptly returned to the undersigned" (Pet. App. 26, 27). At most, the decisions which petitioner cites as in conflict with the decision

below (Pet. 14) hold that such a stipulation should be respected. But the court below plainly did not hold to the contrary. It held only that, since the offer was not rejected in this case, the condition did not take effect.

In short, the court below correctly decided that the government fully complied with the pertinent statutes and regulations, as well as with the terms of its acceptance of the sum furnished by petitioner. The issue as to the implied terms of the particular letter of submission in this case plainly does not warrant further review. The statutory question is both clear and, in the light of the unusual facts on which it arises, of no great importance. There is no conflict among the circuits. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

MAY 1965.

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